IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 51

DUPUY H. ANDERSON and ACIE J. BELTON,

Appellants,

—v.—

WADE O. MARTIN, JR.,

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR APPELLANTS

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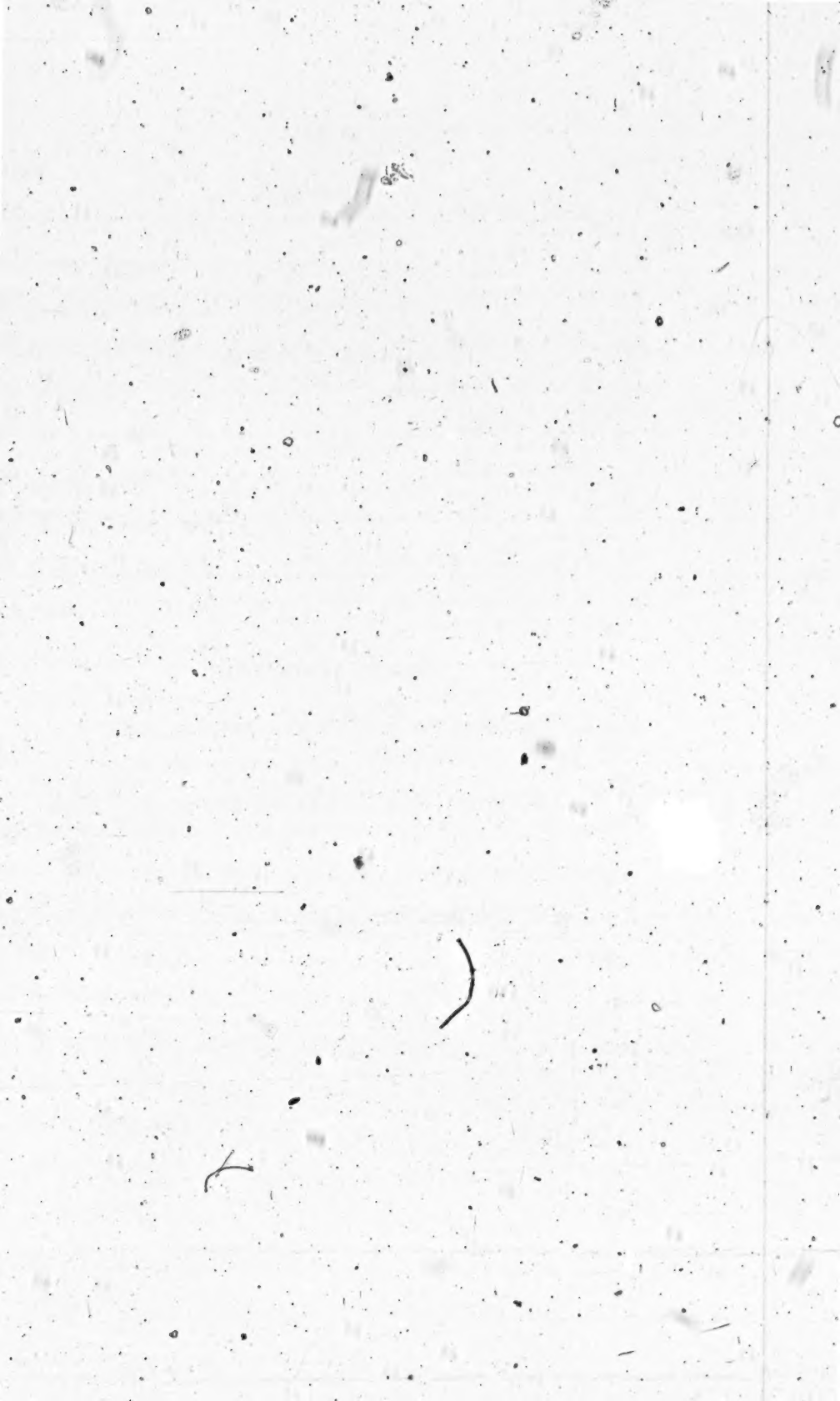

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Opinions Below

The opinion of the three-judge District Court (R. 27) is reported at 206 F. Supp. 700. The dissenting opinion of Judge Wisdom (R. 34) is reported at 206 F. Supp. 705.

Jurisdiction

The order of the District Court denying the prayer for issuance of a permanent injunction was entered on October 3, 1962 (R. 44; Jurisdictional Statement, p. A24). Notice of Appeal to this Court was filed in the District Court on October 25, 1961 (R. 48). Appellants' Jurisdictional Statement was filed on December 21, 1962, and probable jurisdiction was noted on February 18, 1963.

Statutes Involved

La. R. S. §18:1174.1 (1960 Supp.) was enacted as Act No. 538 of the 1960 Regular Session of the Louisiana Legislature. It provides as follows:

> Designation of race of candidates on paper and ballots
>
> A. Every application for or notification or declaration of candidacy, and every certificate of nomination and every nomination paper filed in any state or local primary, general or special election for any elective office in this state shall show for each candidate named therein, whether such candidate is of the Caucasian race, the Negro race or other specified race.
>
> B. Chairman of party committees, party executive committees, presidents or boards of supervisors of election or any person or persons required by law to certify to the secretary of state the names of candidates to be placed on the ballots shall cause to be shown in such certification whether each candidate named therein is of the Caucasian race, Negro race or other specified race, which information shall be obtained from the applications for or notifications or declarations of candidacy or from the certificates of nomination or nomination papers, as the case may be.
>
> C. On the ballots to be used in any state or local primary, general or special election the secretary of state shall cause to be printed within parentheses ( ) beside the name of each candidate, the race of the candidate, whether Caucasian, Negro, or other specified race, which information shall be obtained from the documents described in Sub-section A or B of this Section. The racial designation on the ballots shall be in print of the same size as the print in the names of the candidates on the ballots.

This case also involves the Fourteenth and Fifteenth Amendments to the United States Constitution.

Question Presented

Whether La. R. S. §18:1174.1, which provides for the designation of the race of candidates for elective office on nomination papers and ballots in all primary, general or special elections, violates the equal protection and due process clauses of the Fourteenth Amendment, and the Fifteenth Amendment, to the Constitution of the United States.

Statement

Appellants Dupuy H. Anderson and Acie J. Belton are Negro citizens of the United States and the State of Louisiana, residing in the Parish of East Baton Rouge, Louisiana (R. 3-4, 25). Both were candidates for nomination to the office of Member of the School Board of the Parish of East Baton Rouge in the Democratic Party primary election held on July 28, 1962 (*Ibid.*). They filed a complaint in the District Court for the Eastern District of Louisiana on June 8, 1962 to enjoin the enforcement of Act. No. 538 of the 1960 Session of the Louisiana Legislature (R. 1), which requires that each candidate's race appear beside his name on all nomination papers and ballots. The complaint named as defendant Wade O. Martin, who, as Secretary of State of the State of Louisiana, was charged by the terms of the statute with its enforcement. Asserting that the statute violated *inter alia* the Fourteenth and Fifteenth Amendments to the Constitution, plaintiffs requested preliminary and permanent injunctions and a temporary restraining order. They also asked that a three-judge court be convened pursuant to 28 U. S. C. §2281, 2284.

On June 11, 1962 the motion for temporary restraining order was denied by District Judge West (R. 15).

A three-judge court was convened (R. 17) and the cause was heard on June 26, 1962. At the hearing a responsive pleading was filed admitting many facts alleged in the complaint (R. 25). Defendant had previously filed a motion to dismiss for lack of jurisdiction (R. 22). The court denied the motion to dismiss and proceeded to a hearing on the merits (R. 21). In open court the parties stipulated that the defendant was a ministerial officer required to enforce R. S. §18:1174.1 and that he caused the ballots to be printed in accordance with the provisions of the statute (R. 45-47). After argument, the motion for preliminary injunction was denied on June 26, 1962, with Judge Wisdom dissenting (R. 21-22). The majority and dissenting opinions were filed on June 29, 1963 (R. 27, 34).

On September 19, 1962 Judge West denied (R. 43) plaintiffs' motion for leave to file a proposed amended or supplemental complaint, which alleged that the aforementioned primary election was held on July 28, 1962 and that in accordance with the statute in issue the race of each plaintiff was noted beside his name on the ballot; that plaintiff Anderson was defeated in the primary and plaintiff Belton was defeated in a subsequent run-off primary held on September 1, 1962; that the plaintiffs' unsuccessful candidacies were substantially influenced by the operation and enforcement of the statute; and that the plaintiffs "intend to be candidates in the next duly constituted democratic primary election for nomination as members of the East Baton Rouge Parish School Board and further that they intend to seek other public office" in the parish and the state in the future (R. 37-42).

On September 28, 1962 the three-judge District Court signed (R. 41), and on October 3, 1962 entered (Jurisdictional Statement, p. A24), a final order denying the prayer for permanent injunctive relief. This order incorporated by reference the opinion of June 29, 1962, and again Judge Wisdom noted his dissent.

Notice of Appeal from the denial of a permanent injunction was filed in the District Court on October 25, 1962 (R. 48). The jurisdictional statement was filed in this Court on December 21, 1962, and probable jurisdiction was noted on February 18, 1963.

Summary of Argument

La. R. S. §1174.1 compels each candidate for public office to disclose his race and requires the state to publish the race of each candidate on the ballot. The Constitution is color blind, and this statute denies equal protection of the laws because on its face it compels a classification according to race. Although racial classifications are presumptively invidious, Louisiana has shown no legitimate end to be served by the statute, and in fact the statute unconstitutionally makes racial discrimination possible and encourages the practice. Because racial classifications stigmatize the minority, they are just as much proscribed by the Constitution as more obvious forms of discrimination and physical segregation.

The racial ballot statute clearly is void because it operates with unequal effect against Negro candidates. In Louisiana society, the Negro has been relegated to an inferior status by both private and governmental action; designation as a Negro identifies the candidate with a group that is, by hypothesis according to state policy, unfit for office. Moreover, Negro voters constitute a relatively insignificant

minority of Louisiana's electorate, so that normal patterns of bloc voting, as encouraged by this statute, usually favor the white candidate.

The statute also denies individual liberty without due process of law. The state is requiring the disclosure of information with no bona fide public purpose, much less a compelling interest. By this statute, Louisiana has selected a single, highly prejudicial factor for universal publication, and thus denies the individual the liberty to seek office and campaign for office according to his own estimate of effective campaign tactics.

ARGUMENT

I.

Louisiana's Statute Providing for Racial Designation of Candidates on the Ballot Denies Equal Protection of the Laws.

Section 18.1174.1 of the Louisiana Revised Statutes (Supp. 1961) requires candidates for elective office to state on all applications, declarations of candidacy, and nomination papers whether they are "of the Caucasian race, the Negro race, or other specified race." The Secretary of State is directed by the statute to print each candidate's race in parentheses beside his name on the ballot. The appellants, Negro candidates for state office, challenge the statute's validity under the Fourteenth Amendment.

Without serving any legitimate governmental object, this statute introduces a racial classification into the electoral process. It forces a candidate to disclose information that can prejudice his chances for success at the polls. It positively assures that bigoted voters will not lose, through indolence, apathy, or inattention, an opportunity to enforce-

their racial prejudices at the polls. And it drives home to every voter in Louisiana that the State considers a candidate's race to be a factor worthy of the voter's consideration.

A. *Racial classifications are presumptively invidious and Louisiana has no legitimate governmental purpose in making such a classification on its ballots.*

Contrary to the equal protection clause of the Fourteenth Amendment, this statute on its face classifies persons according to race. It does so no less than a requirement that every man wear an arm band signifying his race or religion or nationality, cf. *American Communications Ass'n* v. *Douds*, 339 U. S. 382, 402 (1950) (dictum). But, "In the eyes of the Constitution a man is a man. He is not a white man, he is not an Indian, he is not a negro." Instant case, R. 34; 206 F. Supp. at 705 (Wisdom, *J.*, dissenting). Before the turn of the century, the first Justice Harlan called for recognition of the essential equality of citizens, rather than an emphasis on irrelevant distinctions:

> . . . in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and take no account of his color when his civil rights as guaranteed by the supreme law of the land are involved. *Plessy* v. *Ferguson*, 163 U. S. 537, 559 (dissenting opinion).

Racial differences do exist, and acknowledgment of these differences, even by the State, can occasionally serve some

useful purpose. The national census, by taking note of race, contributes information of considerable value to social research. The constitutional ban on racially discriminatory state action could not be enforced if courts were truly blind to racial groupings. In such cases the notation of racial differences is unlikely to be objectionable to any person or group, and in any event, it has some reasonable relation to the achievement of a legitimate governmental object.

Here, Louisiana has undertaken to place men in racial categories without serving any legitimate end of the State. Racial designation of candidates has no connection whatever with the State's function of regulating elections. Membership in a given race is not a qualification for office, and it could not be. A voter's knowledge of the race of the respective candidates has no bearing on his qualifications as a voter. If any valid purpose is served by the designation statute, Louisiana's attorney-general has given no hint of it.

"Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect." *Bolling* v. *Sharpe*, 347 U. S. 497, 499; *Korematsu* v. *United States*, 323 U. S. 214, 216; *Hirabayashi* v. *United States*, 320 U. S. 81, 100. As this Court reiterated in the last term, "racial classifications are 'obviously irrelevant and invidious.'" *Goss* v. *Board of Education*, 373 U. S. 683, 687. When the state mandates that its ballots classify all candidates for public office according to race, it must come forward with some explanation.

The only explanation offered anywhere in the record is the conclusion of the court below that racial designation "contributes to a more informed electorate." R. 29; 306 F. Supp. at 702. This conclusion is of course correct, but the only conceivable result of disseminating information

to voters while they are marking their ballots in the voting booth is to encourage voting on the basis of that information. Thus, if this statute has any purpose at all, it is to stimulate and facilitate the racial prejudices of Louisiana's voters. In *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 463, where state-compelled disclosure of the Association's membership list was resisted on the ground that private reprisals would follow, this Court declared that "the crucial factor is the interplay of governmental and private action, for it is only after the initial exertion of state power . . . that private action takes hold." See also, *Barrows* v. *Jackson*, 346 U. S. 249, 254 (award of damages would encourage use of restrictive covenants). Here the state is acting to employ the full potential of possible discrimination by its private citizens. The State can no more encourage voters to discriminate according to race than it can exhort restaurateurs, *Peterson* v. *City of Greenville*,[1] 373 U. S. 244, common carriers, *Boman* v. *Birmingham Transit Co.*, 280 F. 2d 531 (5th Cir. 1960), or school officials, *Gantt* v. *Clemson Agricultural College of South Carolina*, —— F. 2d —— (4th Cir., No. 8871, January 16, 1963), to practice segregation. And having furnished the opportunity for private discrimination, the State is not in a position to assert that discrimination would have occurred without the State's intervention, *cf. Peterson* v. *City of Greenville*, 373 U. S. 244, or to insist on proof that discrimination actually results from the state's conduct, see *Shelton* v. *Tucker*, 364 U. S. 479.

The opinion below errs—it is submitted—in its refusal to acknowledge that this Court's repeated condemnation

[1] In *Peterson* v. *City of Greenville*, *supra*, the segregation ordinance was clearly void and amounted to no more than an exhortation, although by its terms it appeared to be a requirement.

of racial classifications, e.g., *Bolling* v. *Sharpe, supra; Goss* v. *Board of Education, supra,* literally means that unjustified classifications, as well as outright discrimination and physical segregation, are constitutionally impermissible. For a time it was thought that racial segregation did not fall within the ambit of the Fourteenth Amendment, but *Brown* v. *Board of Education,* 347 U. S. 483, dissolved that confusion. It is now recognized that when a dominant majority relegates a racial minority to separate facilities, an inherent inequality of treatment springs from the inevitable stigma attached to the separation. The same is true of classification, particularly when the classification contributes to the attainment of no permissible legislative goal. The Negro candidate who must declare his race and the Negro voter who sees racial designation on the ballot are set apart and stigmatized fully as much as when forced to vote at a segregated polling place.[2] If the official classification served some justifiable governmental purpose, an acknowledgment of physical characteristics might not necessarily stigmatize the minority, but classification for the sake of classification serves only to make an issue of irrelevant differences.

B. *This statute imposes special burden on Negro candidates in Louisiana.*

The presumption that racial classifications are invidious is of course demonstrable here. There need be no diffidence in applying such a presumption when appraising a racial classification imposed by a state whose deepest public

[2] Segregated polling places and voting lists were condemned in *Anderson* v. *Courson,* 203 F. Supp. 806 (M. D. Ga. 1962). The U. S. Civil Rights Commission's Report on Voting, 67-68 (1961) reported on the use of segregated voting machines in St. Helena Parish, Louisiana.

policy commitment is to the maintenance of segregation and white supremacy.[3]

This statute, by its mere existence, is an assertion of the obvious fact that publicizing a candidate's race will have *some* impact upon elections. If Louisiana cared to deny this, it could do so only by asserting that its Legislature did a meaningless thing in passing this law.

It requires only an ordinary citizen's knowledge of the world about us to be sure that in Louisiana it does indeed make a difference whether a man is known and regarded as white or Negro, and that Louisiana's past and present laws have something to do with this difference.[4] Louisiana has so ostracized its Negro citizens, worked so long and hard to brand Negroes as in inferior class and so clearly succeeded in its efforts to stigmatize Negroes, that it is hard to imagine that the State would care to argue that a publication of a Negro candidate's race does not work to his disadvantage. To make such an argument, the State must deny the effectiveness and impact of its most massive and coveted policies.

Louisiana has branded Negroes as inferior and treated them accordingly by virtually every means available. It

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[3] Louisiana expressed this policy unequivocally in 1960, the same year the present racial ballot law was passed, by the preamble to Act No. 630, declaring:

> "WHEREAS, Louisiana has always maintained a policy of segregation of the races, and
>
> "WHEREAS, it is the intention of the citizens of this sovereign state that such a policy be continued."

(La. Acts 1960, p. 1200.)

[4] Even if Louisiana's government had *no responsibility at all* for the "low-caste" status of Negroes in Louisiana life, this law which encourages voters to make decisions on a racial basis effectively operates to maintain the Negro's disadvantaged position by encouraging racism in the voting booth.

is Negroes who have been denied access to the polls in Louisiana, first by the white primary,[5] and now by more sophisticated means.[6] Numerous state laws still command segregation of Negroes in public facilities[7] in the teeth of

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[5] See, *State ex rel. Trosclair* v. *Parish Democratic Committee*, 120 La. 620, 622, 45 So. 526 (1908):

"It is conceded that none but a 'white Democrat is entitled to become a candidate for a Democratic nomination in this State, under the rules adopted by the Party Central Committee, pursuant to Section 9 of Act No. 49, p. 69 of 1906.'"

See also, Woodward, *The Strange Career of Jim Crow* 68 (1963): "The effectiveness of disenfranchisement is suggested by a comparison of the number of registered Negro voters in Louisiana in 1896, when there were 130,334, and in 1904, when there were 1,342. Between the two dates the literacy, property, and poll-tax qualifications were adopted. In 1896 Negro registrants were in a majority in twenty-six parishes—by 1900 in none."

[6] See, e.g., *United States* v. *Manning*, 205 F. Supp. 172 (W. D. La. 1962); *United States* v. *Deal*, —— F. Supp. ——, 6 Race Rel. L. Rep. 474 (W. D. La. 1961); *United States* v. *The Association of Citizens Councils of Louisiana, et al.*, 196 F. Supp. 908 (W. D. La. 1961); *United States* v. *McElveen*, 180 F. Supp. 10 (E. D. La. 1960).

Although non-whites comprised 28.5 percent of the population of Louisiana they account for only 13.8 percent of the registered voters. U. S. Commission on Civil Rights, Report on Voting 107 (1961).

[7] La. R. S. 40:244 (birth certificates); La. R. S. 33:5066-5068 (housing); La. R. S. 33:4558.1 (parks, playgrounds, swimming pools, etc.); La. R. S. 4:5 (circus entrance); La. R. S. 4:452 (seating at entertainments and athletic contests); La. R. S. 4:451 (social functions); La. R. S. 23:971-975 (eating and sanitary facilities in businesses); La. R. S. 9:201 (anti-miscegenation); La. R. S. 13:917, 13:1219 (divorce proceedings); La. R. S. 17:10-12 (institutions for blind and deaf); La. R. S. 46:181 (homes for the aged and infirm); La. R. S. 15:752, 15:854 (prisons); La. R. S. 40:246 (death certificates); La. R. S. 23:972 (separate utensils and eating facilities for employees in businesses); La. R. S. 15:422(6) (Louisiana criminal courts take judicial notice of extra-legal racial customs); La. R. S 17:443, 17:462, 17:493, 17:523 (State employees enjoined from advocating integration under penalty of losing jobs); La. Const., 1921, Art. X, as amended 1960, §5.1 (State segregates all facilities).

this Court's rulings that segregated public facilities can never be equal for the minority group. Louisiana makes it actionable to call a white man a Negro, no matter how innocent the defendant's mistake or how slight the plaintiff's apparent injury; the premise of Negro inferiority shines clearly in this jurisprudence. *Upton* v. *Times Democrat*, 104 La. 141, 28 So. 970 (1900); *May* v. *Shreveport Traction Co.*, 127 La. 420, 53 So. 671 (1910). That Louisiana's political power and high offices, forming a regime notorious for its history of massive resistance to desegregation,[8] lies in the hands of white men alone is a fact which the Court can notice.[9] Louisiana's reports, too, are filled with proof that both the Courts and litigants regard race as "a matter of supreme importance to those who are involved." *State ex rel. Rodi* v. *City of New Orleans*, 94 So. 2d 108, 116 (La. App. 1957). It was said by a Louisiana court in the last mentioned case, which is but one of many where courts were called on to decide whether race was correctly stated in birth or death records,[10] that:

> We feel that nothing can possibly be of more importance than for a person to be absolutely certain as to his genealogy and particularly as to his race; we know that a white person has an absolute right to be known as white and a colored person has the same right to be known as colored, and we know that in

[8] See Wollett, Race Relations, 21 La. L. Rev. 85, 86 (1960).

[9] La. R. S. §15-422(6) (1950) allows Louisiana's courts to take judicial notice of "the political, social and racial conditions prevailing in this State."

[10] E.g., *Sunseri* v. *Cassagne*, 191 La. 209, 185 So. 1 (1938); *Villa* v. *Lacoste*, 35 So. 2d 419 (1948); *State ex rel. Treadway* v. *Louisiana State Board of Health*, 56 So. 2d 249 (La. App. 1952), aff'd 61 So. 2d 735 (1958); *Green* v. *City of New Orleans*, 88 So. 2d 76 (La. App. 1956); *State of Louisiana ex rel. Dupas* v. *City of New Orleans, et al.*, 125 So. 2d 375 (La. App. 1958).

this area nothing can cause greater distress and humiliation to those who believe themselves to be of one race and then to find that they have in their veins the blood of another. *Id.* at 116-17.

It is of course a part of the mystique of racism to define Negroes as those with "any appreciable mixture" of Negro "blood." [11] "A small proportion of Negro 'blood' puts one in the inferior race for segregation purposes; this is the way in which one deals with a taint, such as a carcinogene in cranberries." [12] It is extremely difficult to "qualify" as a white man in Louisiana.

In the circumstances of life in Louisiana, it is vacuous to assert that the racial designation operates equally with respect to all races because all races must be designated on the ballot. To be designated on the ballot by the state as a Negro is to be designated as a legally inferior citizen, one deemed unfit to participate equally in the affairs of the community. To be designated as white is to be grouped with the dominant majority.

Beyond all this, the simple mathematics of population and voter registration remain as an obstacle to the asser-

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[11] Neither the statute challenged in this case nor any other Louisiana statute defines the term "Negro" or any similar term. In *Lee* v. *New Orleans G. N. R.R.*, 125 La. 236, 51 So. 182 (1910), the Supreme Court of Louisiana defined the word "colored" as "a term specifically applied in the United States to negroes or persons having an admixture of Negro blood, the same word is often applied to black people, Africans, or their descents, mixed or unmixed, and to persons who have any appreciable mixture of African blood. . . ."

In *State* v. *Treadway*, 126 La. 300, 52 So. 500 (1910), the same term was defined to mean "of some other color than white, having a dark or black color of the skin, specifically in the United States belonging wholly or partially to the African race, having or partaking of the color of the Negro . . . a person having Negro blood in his veins."

[12] Black, "The Lawfulness of the Segregation Decisions", 69 Yale L. J. 421, 426 (1960).

tion that this law treats Negroes equally. Again, assuming, as the Louisiana law at bar assumes, that race does make a difference to voters, racial bloc voting is facilitated by this law and vastly favors white candidates in Louisiana. No parish in Louisiana has a majority of Negro voters. In all but five of the sixty-four parishes, whites constitute more than 70% of the registered voters.[13] Only at the ward or precinct level is there a possibility, perhaps, that there are areas where racial bloc voting could aid a Negro candidate. So the obvious effect of the law is to aid white candidates through white bloc voting in any interracial election contest.

This attempt by Louisiana to codify racism cannot really be regarded as different from that made by Oklahoma, a decade ago, in passing a statute requiring Negroes, and only Negroes, to disclose their race for designation on the ballot. The Tenth Circuit struck down the law because it was blatantly discriminatory against Negroes. *McDonald* v. *Key*, 224 F. 2d 608 (1955), *cert. denied*, 350 U. S. 895. The draftsman of Louisiana's law was more astute, but the Constitution forbids "sophisticated as well as simple-minded modes of discrimination." *Lane* v. *Wilson*, 307 U. S. 268, 275; *Gomillion* v. *Lightfoot*, 364 U. S. 339, 342; *cf. Smith* v. *Texas*, 311 U. S. 128, 132.

In summary, Louisiana's statute operates with unequal effect against the Negro. It is invalid because the State has no more right to encourage voters to discriminate by race, or to act to insure that they will, than it has to require voters to discriminate racially. This statute is also defective because it ignores the fundamental assumption of the Fourteenth Amendment. Racial distinctions are invalid "simply because our Constitution presupposes that men are

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[13] U. S. Commission on Civil Rights, Report on Voting 266-69 (1961).

created equal, and that therefore racial differences cannot provide a valid basis for governmental action." *School District of Abington Township* v. *Schempp*, 374 U. S. 203, 317 (Stewart, *J.*, dissenting). "[T]he Fourteenth Amendment requires that race not be treated as a relevant factor" *Ibid.* Repudiating these fundamental principles, the State of Louisiana is, by its racial ballot law, enforcing an official policy, however inexplicit, that differences in race justify differences in treatment.

II.

Louisiana's Statute Requiring Each Candidate to Disclose His Race for Publication on the Ballot Constitutes a Denial of Liberty Without Due Process of Law.

Louisiana's statute also deprives the individual of his liberty without due process of law. It deprives him of the opportunity to seek public office without identifying with an ethnic group and disclosing that identity for official publication. The plaintiffs choose to run for office as men rather than as Negroes and to have the publication of their racial background, and indeed of any other facts, left to normal campaign channels, but this liberty the State denies by taking the matter into its own hands.

If any bona fide public purpose were served by the operation of this statute the Court would be faced with a difficult issue such as those posed in *Talley* v. *California*, 360 U. S. 928; *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449; and *Gibson* v. *Florida Investigation Committee*, 360 U. S. 919, where the governmental object to be served by compulsory disclosure had to be weighed against the individual's constitutional rights. Here, the statute serves no legitimate governmental object.

Balanced against the state's utter absence of a valid governmental purpose is a serious invasion of the individual's right to campaign for office on his own ground. The court below refused to recognize any claim to the right of privacy in this case, declaring that it was "not disposed to create a shield against the brightest light of public examination of candidates for public office." This misstates the issue, for the question is not whether the court should create a shield, but whether the state can shine the light.

Voters often judge candidates by strange criteria. Race is important in Louisiana. Health, religion, nationality, age, and sex are other factors that can influence a voter's decision. In some circumstances such factors could conceivably relate rationally to a man's conduct in the office he seeks. Often such factors are seized upon unthinkingly. None could deny the individual voter's right to give them whatever importance he chooses.

It is equally clear that each person who seeks public office has the right to advertise his virtues and try to minimize his deficiencies. In his attempt to persuade the electorate, the candidate must carefully select those items of information that he believes to be most helpful to his cause and give them the broadest publication. If his opponent plays up the candidate's weaknesses, there can be no complaint. But the government has no business trying to influence the electorate. When the state disseminates campaign information it intrudes into an area where it can do incalculable harm. Here, the State of Louisiana is disseminating information on each candidate's race while the voter is recording his decision. In order to do so the state forces the candidate to provide it with the needed information. Compulsory disclosure destroys the candidate's freedom to conduct his own campaign; due process requires that some legitimate governmental end be served. *Bolling* v. *Sharpe*, 347 U. S. 497.

CONCLUSION

For the foregoing reasons, appellants respectfully submit that the judgment below should be reversed.

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